LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 5 1966
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

---

No. 918

---

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL., *Petitioners*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

---

**Motion for Leave to File and Petition for Rehearing of Order Denying Petition For Writ of Certiorari**

---

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington, D. C. 20006

918 Marine Bank Building
Tampa, Florida

LESTER P. SCHOENE
MILTON KRAMER
MARTIN W. FINGERHUT
RICHARD H. FRANK

*Counsel for Petitioners*

PRINTED BY BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1965

---

No. 918

---

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL., *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

---

## (A) Motion For Leave to File Petition For Rehearing

---

International Brotherhood of Electrical Workers, AFL-CIO, *et al.*, respectfully move for leave to file the annexed petition for rehearing of the order of the Court denying the petition for writ of certiorari in this case, entered on March 21, 1966. Rehearing is sought because, as is pointed out more fully in the annexed petition, the issues in this case are related to the issues presented in *Brotherhood of Railway and Steamship*

*Clerks* v. *Florida East Coast Railway Company,* No. 750, *United States* v. *Florida East Coast Railway,* No. 782, and *Florida East Coast Railway Company* v. *United States,* No. 783, all of which have been consolidated, are pending before the Court, and are to be heard during the week of April 18, 1966.

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington, D. C. 20006

918 Marine Bank Building
Tampa, Florida

LESTER P. SCHOENE
MILTON KRAMER
MARTIN W. FINGERHUT
RICHARD H. FRANK

*Counsel for Petitioners*

April 5, 1966

## (B) Petition For Rehearing of Order Denying Petition For Writ of Certiorari

International Brotherhood of Electrical Workers, AFL-CIO, *et al.*, pray that the Court grant rehearing of its order of March 21, 1966, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the District of Columbia Circuit in the above-entitled case as prayed for in the petition filed January 17, 1966, herein.

### REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1. The petition for a writ of certiorari herein was filed on January 17, 1966. On January 24, 1966 the Court granted the petitions for certiorari in Nos. 750, 782, and 783, all of which, like this case, grew out of the more-than-three-year-old strike of non-operating railway employees of the Florida East Coast Railway Company, and those cases, like this case, present issues as to the appropriate function of the Federal Government in affecting the utility of the relative economic sanctions available to the respective disputants. The Federal Government, throughout the strike, has unquestionably in fact governed the effectiveness of economic sanctions, through the Railway Labor Act, the National Labor Relations Act as applied in this case, the decision under review in Nos. 750, 782, and 783, and several other rulings of lower federal courts.

2. The petitioners in No. 750 include all the petitioners in this case, as well as other striking railway unions whose rights will be determined by this case even though they were not made parties to the NLRB charges and complaint. However, under the rules and

practices of the Court governing petitions for certiorari, neither in No. 750 nor in this case was the petition for certiorari deemed by counsel for petitioners to be an appropriate vehicle for setting forth in detail the interrelationships between that case and this one and the several other cases in the lower federal courts.

The first appropriate occasion for a detailed exposition of this interrelationship was petitioners' brief on the merits in No. 750, which was filed on the same day that the order was entered denying the petition for certiorari in this case. Clearly the Court had no opportunity to consider the petition for certiorari in this case in conjunction with the brief on the merits in No. 750.

3. The brief on the merits in No. 750 does set forth at pages 21 to 27, under the heading "Companion Litigation" the interrelationships between Nos. 750, 782, and 783, this case, and other cases in the lower federal courts. That exposition, in summary, shows that the federal courts have proscribed effective picketing at both the northern and southern termini of the struck railroad, and in this case the NLRB with the approval of the Court of Appeals has also foreclosed picketing at the only other point where it might be expected to have an economic effect sufficient to induce the carrier to make any effort to settle the controversy. The unions have abided by these restrictions. On the other hand, the carrier has in the meantime, through delays in judicial proceedings, stays of injunctive orders and outright contempt of court, been able to pursue virtually without judicial hindrance its alleged "right to operate under strike conditions."

The right to withdraw from service (after all procedures and restraints of the Railway Labor Act have

been exhausted) and to picket in support of that withdrawal, are the only economic sanctions the employees have. The right to picket effectively at the southern terminus was denied for two and a half years; the right to picket effectively at the northern terminus is still denied, although we believe not permanently; unless the Court reconsiders its denial of certiorari in this case in conjunction with the alleged right of the carrier to pursue whatever course it considers expedient to operate under strike conditions the Court will have foreclosed permanently the right of employees to picket at the only other point where picketing may be expected to be effective,* as well as having determined adversely to petitioners without hearing on the merits, the important issues as to the respective functions of the Railway Labor Act and the National Labor Relations Act that have been presented in the petition for certiorari in this case.

---

* The economic importance of the Cape Kennedy spur is indicated in No. 750 by the testimony of the F.E.C.'s president that traffic on the spur "has increased tremendously and * * * [is] going to increase substantially." (No. 750, R. 393, Pet. Nr. p. 23) That protection of the interests of the United States in its aeronautics and space program does not require the distorted application of the NLRA sanctioned below is also shown by the record in No. 750. (Exh. Vol. p. 460) It is there shown that a special Federal Inquiry Board appointed by President Kennedy on September 24, 1963, composed of representatives of the Department of Labor, the Department of Defense, and the National Aeronautics and Space Administration, to investigate the current and potential impact of this labor dispute on the Nation's defense and space efforts recommended "that NASA and the Air Force establish an embargo until the dispute was settled on all shipments traveling over the Florida East Coast under Government bills of lading."

## CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari it is respectfully urged that the Court rehear the petition for certiorari in conjunction with its consideration of the merits of Nos. 750, 782, and 783 and that upon such rehearing a writ of certiorari issue to the Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington, D. C. 20006

918 Marine Bank Building
Tampa, Florida

LESTER P. SCHOENE
MILTON KRAMER
MARTIN W. FINGERHUT

RICHARD H. FRANK

*Counsel for Petitioners*

April 5, 1966

### Certificate of Counsel

We hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58(2) of the rules of this Court.

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington, D. C. 20006

918 Marine Bank Building
Tampa, Florida

LESTER P. SCHOENE
MILTON KRAMER
MARTIN W. FINGERHUT

RICHARD H. FRANK

*Counsel for Petitioners*